REMARKS

This communication is a full and timely response to the non-final Office Action dated December 18, 2009. Claims 16-18 and 20-25 are pending. By this communication, claims 16-18 and 23-25 are amended, and claim 19 is cancelled. No new matter is added. Favorable reconsideration of this application in view of the following remarks is respectfully requested.

Claim Rejections

Claims 16-19 and 23-25 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

Claims 16-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Takashi* (JP 2000-29648) in view of *Yasushi* (JP 11-220609) and *Albanese* (U.S. Patent No. 5,617,541).

Claim 25 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Takashi*, *Yasushi*, and *Albanese* as applied to claim 23 above, and further in view of *Felouzis* (U.S. Patent No. 5,943,673).

Rejection under 35 U.S.C. §101

Claims 16-19 and 23-25 are rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

MPEP § 2106.01.I, second paragraph, provides that a computer program (e.g., system software program instructions), as functional descriptive material, is <u>statutory</u> when the computer program is recited as being stored (encoded) on a computer readable medium and executed by a computer, because such a recitation identifies the structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized.

Claims 16-18 are amended to read, "A computer-readable medium having stored thereon a data communication program for causing..." and claims 23-25 are amended to read, "a non-transitory recording medium recorded..."in order to overcome the 35 U.S.C. 101 rejection set forth above. The Applicant respectfully submits that amended claims 16-18 and 23-25 are directed to statutory subject matter. Accordingly, the Applicant respectfully requests that the rejection of claims 16-18 and 23-25 be withdrawn.

Rejections under 35 U.S.C. §103

Claims 16-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takashi* (JP 2000-29648) in view of *Yasushi* (JP 11-220609) and *Albanese* (U.S. Patent No. 5,617,541).

Independent claim 16 recites, "A data communication program stored on a computer-readable medium for causing a computer to execute. . .each firmware having a memory write priority level set...acquiring information relating to said priority level...determining whether said attached one firmware *attains a write allowable state into a predetermined memory based on said acquired information relating to a priority level*, and permitting writing of said one firmware into a predetermined memory *when it is determined the firmware attached attains a write allowable state by said determination step*.

The Applicant respectfully submits that the purported combination cannot support a rejection of claim 16 because the cited references, taken alone or in combination, fail to disclose each element recited in claim 16.

Takashi discloses a system and method for updating the firmware or function setting of a printer remotely using email messages. The system includes an email processing section configured to change the received data into an execution program. The execution program is then run to update the printer firmware.

Takashi does not disclose or suggest acquiring information relating to a priority level of attached firmware, determining whether the attached firmware attains a write allowable state into a predetermined memory based on acquired information relating to a priority level, and permitting writing of firmware into a predetermined memory when it is determined the firmware attached attains a write allowable state by said determination step. Furthermore, *Takashi* is entirely silent with respect to firmware having a memory write priority level. To which all, the Examiner concedes.

The Examiner then turns to *Yasushi*. *Yasushi* discloses a system and method for printing image data that has been transmitted via a plurality of email attachments. According to *Yasushi*, when an image file has been divided into a plurality of attachments, the data of each file is received, combined, and restored PRIOR to supplying it to the printing process. *Yasushi*, in addition to *Takashi,* does not disclose or suggest firmware having a memory priority level. Nor does *Yasushi* disclose or suggest acquiring information relating to a priority level or determining if a firmware should attain a write allowable state based on the acquired information relating to a priority level, as recited in claim 16, to which, the Examiner again concedes.

The Examiner turns to *Albanese* to address these deficiencies by citing the reference for allegedly disclosing "data having priority levels [col. 2, 1.58 - col. 3, 1.6]". The Applicant respectfully submits that *Albanese* does not disclose or suggest acquiring information relating to a priority level or determining if a firmware should attain a write allowable state based on the acquired information relating to a priority level, as recited in claim 16.

Albanese discloses a system for packetizing encoded data corresponding to priority levels. As taught by Albanese, a data distribution system 100 includes a transmitting data processing system 102 and a receiving data processing system 106. The transmitting data

processing system 102 is configured to encode different portions of a data stream such that portions of the data stream denoted as having a higher priority are encoded with a higher level of redundant data than portions of the data stream denoted as having lower priority, in order to prevent loss of the higher priority data in the event of some data loss condition. See, e.g., col. 2, ll. 5-29. Once the data is encoded, it can be transmitted.

The receiving data processing system 106, as disclosed by *Albanese*, is configured to receive and store the encoded data and, ultimately, decode the data.

More specifically, the transmitting data system 102 is configured to divide the encoded data into blocks having assigned priority levels p1, p2, p3. Multiple blocks are loaded into a packet, which has an associated ID. In some embodiments, the packets can be arranged such that highest priority data blocks are positioned first within the packets. Because encoded data is transmitted as a set of data packets, some data packets within a message may take longer than others to arrive at the receiving data processing system 106 and may not arrive in the original order. When the data packets arrive, the IDs allow the receiving station to <u>reassemble</u> the received data packets in their proper order. See, e.g., col. 7, ll. 1-23. Said another way, each packet is received and then reassembled according to its ID with respect to other received packets of the data stream, PRIOR to processing/decoding. Furthermore, a sufficient number of packets must arrive in order to reassemble an entire message block. In other words, a decoding procedure is not initiated until an entire message block (e.g., a plurality of packets) is reassembled. See, e.g., col. 10, ll.6-10.

In contrast, independent claim 16 recites, "… an acquirement step of acquiring information relating to said priority level of said attached one firmware from said electronic mail. . .determining whether said attached one firmware attains a write allowable state into a predetermined memory based on said acquired information relating to a priority level. . .and

permitting writing of said one firmware into a predetermined memory when it is determined the firmware attached attains a write allowable state by said determination step." Said another way, the claimed invention does NOT wait for the entire firmware to be received (as in *Albanese*) prior to writing a part to memory, it only requires that the rewrite order is maintained. For example, if a firmware is divided into 3 parts, each part is assigned a memory priority level (1/3, 2/3, and 3/3). If firmware 1/3, which is of highest priority, as indicated by '1', is received, it is written to memory regardless if firmware 2/3 and 3/3 have been received. However, if firmware 2/3, which is of second highest priority, is received first, it is not written until 1/3 (e.g., highest priority) has been written, but it need not wait for 3/3 (lowest priority). As a result, the order for writing the divided firmware into memory is maintained without delaying the writing operation by waiting for all parts to be received.

Accordingly, *Albanese* fails to disclose or suggest "acquiring information relating to said priority level of said attached one firmware. . .determining whether **said attached one firmware** attains a write allowable state…based on said acquired information relating to a priority level. . .and permitting writing of said one firmware…when it is determined the firmware attached attains a write allowable state by said determination step," as recited in claim 16 (emphasis added).

The Examiner has conceded that *Takashi* and *Yasushi* fail to disclose or suggest these features. (Office Action, pp. 3 & 4). Therefore, *Takashi, Yasushi,* and *Albanese,* taken individually or in combination, do not disclose or suggest the claimed features and, therefore, cannot support a *prima facie* case for rejecting claim 16 under 35 U.S.C. § 103(a).

Accordingly, the Applicant respectfully submits that independent claim 16 is patentably distinct from *Takashi, Yasushi,* and *Albanese.* Thus, the Applicant respectfully requests that the rejection be withdrawn.

Independent claims 20, 22, and 23, although having different scope, recite similar distinguishing features as noted above with respect to claim 16. Therefore, arguments similar to those above in connection with claim 16 also apply to claims 20, 22, and 23. Accordingly, the Applicant respectfully submits that claims 20, 22, and 23 are patentably distinct from *Takashi, Yasushi,* and *Albanese*. Thus, the Applicant respectfully requests that the rejections be withdrawn.

Further, dependent claims 17, 18, 21, 24, and 25 depend from independent claims 16, 20, 22, and 23, and therefore include all the limitations of the corresponding independent claims from which they depend. The Applicant respectfully submits that none of *Takashi, Yasushi,* and *Albanese*, or any reasonable combination thereof, disclose or suggest the above noted features of the Applicant's claims. Accordingly, claims 17, 18, 21, 24, and 25 are allowable over the applied references, whether taken alone or in combination, for the reasons already set forth above with regard to claims 16, 20, 22, and 23.

Claim 25 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takashi, Yasushi,* and *Albanese* as applied to claim 23 above, and further in view of *Felouzis* (U.S. Patent No. 5,943,673).

Claim 25 depends from independent claim 23, and is therefore allowable based at least on its dependence from an allowable base claim. Accordingly, claims 25 is allowable over the applied reference for at least the reasons already set forth above with regard to claims 23. Thus, the Applicant respectfully requests that the rejection be withdrawn.

For at least the reasons stated above, Applicant respectfully submits that all pending claims are allowable.

CONCLUSION

All of the stated grounds of rejection have been properly traversed or rendered moot. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. The Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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